



January 19, 2007

HOUSE BILL No. 1092

DIGEST OF HB 1092 (Updated January 17, 2007 3:53 pm - DI 103)

Citations Affected: IC 22-2; noncode.

Synopsis: Military family leave. Establishes an unpaid leave of absence of up to 10 days for the spouse or parent of a person ordered to involuntary active duty in the United States armed forces or the National Guard for deployment overseas. Requires an employee to provide notice before taking the leave. Allows an employer to require verification of employee's eligibility for the leave. Requires an employee to be restored to the position that the employee held before the leave or to an equivalent position. Requires an employer to permit an employee who is taking a leave to continue the employee's health care benefits at the employee's expense. Allows the employer and the employee to negotiate to have the employer pay for the benefits. Provides legal and equitable remedies for violations.

Effective: July 1, 2007.

Avery, Hinkle, Stilwell

January 8, 2007, read first time and referred to Committee on Small Business and Economic Development.
January 18, 2007, amended, reported — Do Pass.

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HB 1092—LS 6397/DI 103+



January 19, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1092

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-2-13 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2007]:

4 **Chapter 13. Military Family Leave**

5 **Sec. 1. This chapter applies to an employer that employs at least**
6 **fifty (50) employees for each working day during each of at least**
7 **twenty (20) calendar work weeks.**

8 **Sec. 2. As used in this chapter, "armed forces of the United**
9 **States" means the active or reserve components of:**

- 10 (1) the Army;
11 (2) the Navy;
12 (3) the Air Force;
13 (4) the Coast Guard;
14 (5) the Marine Corps; or
15 (6) the Merchant Marine.

16 **Sec. 3. As used in this chapter, "employee" means a person**
17 **employed or permitted to work or perform services for**

HB 1092—LS 6397/DI 103+



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remuneration under a contract of hire, written or oral, by an employer.

Sec. 4. As used in this chapter, the term "employer" includes the state and political subdivisions of the state.

Sec. 5. As used in this chapter, "health care benefits" means employer provided health coverage, including coverage for medical care, prescription drugs, vision care, medical savings accounts, or any other health related benefit.

Sec. 6. As used in this chapter, "involuntary active duty" means full-time service on involuntary orders in:

- (1) the armed forces of the United States; or
- (2) the National Guard;

for a period that exceeds eighty-nine (89) consecutive calendar days.

Sec. 7. As used in this chapter, "National Guard" means:

- (1) the Indiana Army National Guard; or
- (2) the Indiana Air National Guard.

Sec. 8. As used in this chapter, "parent" means:

- (1) a biological father or mother;
- (2) an adoptive father or mother; or
- (3) a court appointed guardian or custodian.

Sec. 9. (a) An employee who:

- (1) has been employed by an employer for at least twelve (12) months;
- (2) has worked at least one thousand two hundred fifty (1,250) hours during the twelve (12) month period immediately preceding the day the leave begins; and
- (3) is the spouse or parent of a person who is ordered to involuntary active duty;

is entitled to an unpaid leave of absence as provided in subsection (b).

(b) An employee may take a leave of absence during one (1) or more of the following periods:

- (1) During the thirty (30) days before involuntary active duty orders are in effect.
- (2) During a period of leave while involuntary active duty orders are in effect.
- (3) During the thirty (30) days after the involuntary active duty orders are terminated.

(c) The leave of absence allowed each year under subsection (a) may not exceed a total of ten (10) days.

(d) The leave of absence provided by this chapter is in addition

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1 to regular vacation leave, sick leave, or other leave, including
 2 additional military family leave offered at the discretion of an
 3 employer, to which an employee may be entitled.

4 Sec. 10. (a) An employee who wants to take a leave of absence
 5 under this chapter shall provide notice to the employee's employer
 6 of the date the leave will begin. An employee shall attempt to give
 7 at least thirty (30) days notice before the date on which the
 8 employee intends to begin the leave. In any event, the employee
 9 shall give as much notice as is practicable.

10 (b) An employer may require verification of an employee's
 11 eligibility for the leave. If an employee fails to provide verification
 12 required under this subsection, an employer may consider the
 13 employee's absence from employment unexcused.

14 Sec. 11. (a) Except as provided in subsection (b), after an
 15 employee takes a leave of absence under this chapter, an employee
 16 must be restored to:

- 17 (1) the position that the employee held before the leave; or
- 18 (2) a position equivalent to the position that the employee held
- 19 before the leave, with equivalent seniority, pay, benefits, and
- 20 other terms and conditions of employment.

21 (b) An employer is not required to restore an employee to a
 22 position described in subsection (a) if the employer proves that the
 23 reason that the employee was not restored to the position is
 24 unrelated to the employee's exercise of the employee's rights under
 25 this chapter.

26 Sec. 12. (a) An employer shall permit an employee who is taking
 27 a leave of absence under this chapter to continue the employee's
 28 health care benefits at the employee's expense.

29 (b) The employer and employee may negotiate for the employer
 30 to continue the employee's health care benefits at the employer's
 31 expense during the leave.

32 Sec. 13. (a) An employer shall not interfere with, restrain, or
 33 deny the exercise of or the attempt to exercise any right provided
 34 under this chapter.

35 (b) An employer shall not discharge, fine, suspend, discipline, or
 36 discriminate in any other manner against an employee who
 37 exercises or attempts to exercise any right provided under this
 38 chapter.

39 Sec. 14. (a) An employee may bring a civil action at law to
 40 enforce this chapter.

41 (b) A circuit court may:

- 42 (1) enjoin any act or practice that violates this chapter; and

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1 (2) order any other equitable relief that is just and proper
2 under the circumstances to redress the violation of or to
3 enforce this chapter.

4 SECTION 2. [EFFECTIVE JULY 1, 2007] IC 22-2-13, as added
5 by this act, does not excuse noncompliance with a provision of a
6 collective bargaining agreement or other employment benefit
7 program or plan in effect on July 1, 2007, that is not in substantial
8 conflict with IC 22-2-13, as added by this act. IC 22-2-13, as added
9 by this act, does not justify an employer reducing employment
10 benefits provided by the employer that exceed the benefits required
11 by IC 22-2-13, as added by this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Small Business and Economic Development, to which was referred House Bill 1092, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 8 through 12.

Page 1, line 13, delete "3." and insert "2.".

Page 2, line 4, delete "4." and insert "3.".

Page 2, line 8, delete "5." and insert "4.".

Page 2, line 10, delete "6." and insert "5.".

Page 2, between lines 13 and 14, begin a new paragraph and insert:

"Sec. 6. As used in this chapter, "involuntary active duty" means full-time service on involuntary orders in:

(1) the armed forces of the United States; or

(2) the National Guard;

for a period that exceeds eighty-nine (89) consecutive calendar days."

Page 2, line 27, delete "called to" and insert **"ordered to involuntary"**.

Page 2, line 28, delete "duty for deployment overseas;" and insert **"duty;"**.

Page 2, line 29, delete "this chapter" and insert **"subsection (b)."**

Page 2, delete lines 30 through 31, begin a new paragraph and insert:

"(b) An employee may take a leave of absence during one (1) or more of the following periods:

(1) During the thirty (30) days before involuntary active duty orders are in effect.

(2) During a period of leave while involuntary active duty orders are in effect.

(3) During the thirty (30) days after the involuntary active duty orders are terminated."

Page 2, line 32, delete "(b)" and insert **"(c)"**.

Page 2, line 33, delete ":".

Page 2, delete line 34.

Page 2, line 35, delete "(2)".

Page 2, line 35, delete "days for a parent." and insert **"days."**

Page 2, run in lines 33 through 35.

Page 2, line 36, delete "(c)" and insert **"(d)"**.

Page 2, line 37, after "other leave" insert **", including additional military family leave offered at the discretion of an employer,"**.

Page 2, line 41, delete "If the leave will last at least five (5)".

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Page 2, line 42, delete "consecutive work days, the" and insert "**An**".

Page 2, line 42, after "shall" insert "**attempt to**".

Page 3, line 2, delete "If the leave will last less than five (5) consecutive work" and insert "**In any event,**".

Page 3, line 3, delete "days,".

Page 3, delete lines 4 through 5, begin a new paragraph and insert:

"(b) An employer may require verification of an employee's eligibility for the leave. If an employee fails to provide verification required under this subsection, an employer may consider the employee's absence from employment unexcused."

and when so amended that said bill do pass.

(Reference is to HB 1092 as introduced.)

ORENTLICHER, Chair

Committee Vote: yeas 11, nays 0.

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